

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

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U.S. DISTRICT COURT
SAN JUAN, P.R.

ANTONIO CORDOVA GONZALEZ,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant

Civ. No. 97-1672(PG)

OPINION & ORDER

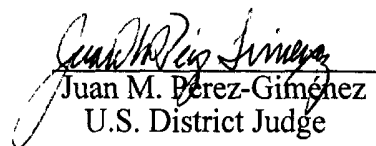
Before the Court is petitioners Request for a Certificate of Appealability. (Dkts. 102, 103, 104). 28 U.S.C.A § 2253(c)(1) provides that appeal from a § 2255 final order may be taken only when a circuit justice or judge issues a certificate of appealability. The statute indicates that a certificate of appealability may issue only when the applicant has made a substantial showing of the denial of a constitutional right. 28 U.S.C.A §2253(c)(2). The First Circuit has interpreted these provisions to permit the district courts to issue or deny the requisite certificate of appealability, while allowing petitioners to seek supplemental certificates from the court of appeals in certain circumstances. *See U.S. v. Barrett*, 178 F.3d 34, 40 (1st Cir. 1998); *Bui v. Dipaolo*, 170 f.3d 232, 236-38 (1st Cir. 1999); *Grant Chase v. Commissioner of New Hampshire Dep't of Corrections*, 145 F.3d 431, 435 (1st Cir. 1998)(Noting that "every court of appeals that has considered the question has concluded that a district judge may issue a certificate of appealability").

After reviewing the record, the Court is convinced that petitioner has not made a substantial showing of denial of a constitutional right as to any of the issues he presents. Petitioner was sentenced to 108 months, precisely the sentence he bargained for and the Government accepted in the Plea Agreement. Moreover, petitioner's downward departure arguments were presented at the time of sentence, documented in the pre-sentence investigation report, and duly considered by the Court at the time of sentencing. The original guideline application is the most accurate application of the law to the

Civ. No. 97-1672(PG)

2

facts. Petitioner has simply failed to demonstrate that “the issues are debatable among jurist of reason; that could resolve the issues [in a different manner]; or that the questions are ‘adequate to deserve encouragement to proceed further.’” *Gee v Shillinger*, 979 F. 2d 176, 178 (10th Cir. 1992); *See also Wells By and Through Kehne v. Arave*, 18 F.3d 656, 658 (9th Cir. 1994); *Sawyers v. Collins*, 986 F.2d 1483, 1506 (5th Cir. 1993). Petitioner has no reasonable basis for claiming that he has been denied a constitutional right. *Evicci v. Commissioner of Corrections*, 226 F.3d 26, 28 (1st Cir. 2000). Wherefore, Petitioners request for a Certificate of Appealability is **DENIED**.

IT IS SO ORDEREDSan Juan, Puerto Rico January, 8, 2001
Juan M. Pérez-Giménez
U.S. District Judge